795.

SUPREME COURT OF THE UNITED STATES.

No. 127.

THE PRESIDENT, DIRECTORS AND COMPANY OF THE BANK OF TENNESSEE, PL'FFS IN ERROR,

vs.

LEWIS B. HORN.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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CIRCUIT COURT OF THE UNITED STATES,
Fifth circuit and eastern district of Louisiana.

A transcript of the record and proceedings in the case of—

LEWIS B. HORN
vs.
G. BERNARD et als. } No. 2241.

Be it remembered that heretofore, to wit, on the 18th day of April, A. D. 1853, Lewis B. Horn, by his attorneys, Stockton & Steele, came into the clerk's office of said court, and filed therein the following

Transcript from the third judicial district court of Louisiana.

STATE OF LOUISIANA,
Third judicial district court, parish of Jefferson.

LEWIS B. HORN
vs.
G. BERNARD et als. } No. 4915.

Petition.—Filed Jan. 3, 1853.

To the honorable the judge of the 3d judicial district court of the State of Louisiana:

The petition of Lewis B. Horn, who resides in New Orleans, respectfully shows: that on or about the 19th May, 1852, Alexander Brother, of the city of New Orleans, and syndic of the creditors of Peter Conrey, jr., by virtue of an order of the 2d district court of New Orleans, after the legal delays and formalities of law were duly complied with, caused certain properties belonging to said Conrey to be sold at public auction by J. A. Beard & May, duly licensed auctioneers for said city and parish of Orleans. That at said sale your petitioner, being the last and highest bidder, for and in consideration of the sum of forty-six hundred and forty dollars, "$4,640," became the purchaser of the following described property, viz: all and singular a certain square of ground situated in the town of Rickerville, parish of Jefferson, in this State, and measuring two hundred and eighty feet one inch and six lines front on Nayades street; two hundred and seventy feet front on St. Denis street; four hundred and fifty-four feet four inches and two lines front on Joseph street; and five hundred and thirty feet three inches and four lines front on Octavia, and subdivided into 32 lots, numbered from 1 to 32, inclusive, as per plan of C. A. Hedin, architect, dated 23d April, 1852, and deposited in the office of T. O. Stark, not. pub., in and for the city of New Orleans, as plan No. 113. Said square being the same property which the said Conrey acquired of the City Bank of New Orleans, on or about the 27th day of June, 1849,

as per act before Joseph R. Beard, then a notary public in said city, and is also designated on the original plan of the town of Rickerville, deposited in the office of said Beard as square No. 57. That in conformity to said sale and adjudication at public auction as aforesaid, and in order to give your petitioner a more full and complete title to said property, the said Alexander Brother, syndic as aforesaid, did, on the 28th August, 1852, before T. O. Stark, notary aforesaid, pass an act or deed of sale to your petitioner for the afore-described property; and that your petitioner did, in conformity to said adjudication and act of sale, pay the said Alexander Brother the aforesaid price and sum of $4,640, as follows, viz: $1,160 cash; and for the balance he gave his three promissory notes, each for a like sum of $1,160, dated on the 19th May, 1852, and made payable at 6, 12 and 18 months after date; all of which will more fully appear by reference to a copy of said act of sale, herewith annexed and made part of this petition.

Your petitioner further avers, that one of the said notes having matured, he has paid the same. That since his said purchase he has not been able to obtain possession of said property; that he is the true and bona fide owner thereof; but that one Glovers Bernard and one Christian Hare have possession of the same, and refuse to deliver possession thereof to your petitioner. Your petitioner avers, that said Bernard and said Hare have no right or title in or to said property; that their possession is illegal and to the prejudice of your petitioner. That the said Bernard and the said Hare are responsible to him in solido, for the rent of the aforesaid property thus illegally occupied, from said 19th May, 1852, until your petitioner is placed in full, complete and peaceable possession thereof, at the rate of $25 per month, being the value of said property per month.

Your petitioner further avers, that said Alexander Brother, in his capacity of syndic aforesaid, is bound to place your petitioner in full, complete, and peaceable possession of said property, or to return to your petitioner the aforesaid purchase money and notes, and such damages as your petitioner may suffer from his failing thus to place him in possession; and that he is further responsible to your petitioner for the advanced value of said property, say twenty-five hundred dollars. Wherefore your petitioner prays to be allowed to call said Alexander Brother, syndic as aforesaid, in warranty, that he be duly cited to appear and answer this petition; that he be ordered to cause your petitioner to be put in full, complete, and peaceable possession of said property, and in the event of his failing so to do, that he be ordered to return to your petitioner the aforesaid sums received by him, viz.: the amount of the cash payment and note due at six months after date, viz. $2,320, and your petitioner's two notes, payable respectively at 12 and 18 months after date, and also the sum of $2,500, for damages, &c., as aforesaid.

And your petitioner further prays, that said Glovers Bernard and Christian Hare be duly cited to appear and answer this petition, and that after due proceedings had, that they be condemned to put your pe-

titioner in the full, entire, and complete possession of the aforesaid property, and that they be further condemned in solido to pay your petitioner the aforesaid rent of $25 per month from 19th May, 1852, as aforesaid.

Your petitioner further prays, that he be decreed to be the true, sole, and bona-fide owner and proprietor of said property; and he further prays for all other and further relief.

Citation.

STATE OF LOUISIANA, *Third judicial district court.*

LOUIS B. HORN
vs.
G. BERNARD et als. } 4915.

Mr. Glovers Bernard and Christian Hare, you are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the third judicial district court, in the parish of Jefferson, in ten days after the service hereof.

Witness the honorable J. C. Clark, judge of the said court, this 3d day of January, 1853.

(Signed) C. BUISSON, *Deputy clerk.*

Sheriff's return.

Received 4th January, 1853, and on the 6th day of the same month served copies of the within citation and copies of the petition on Glovers Bernard and on Christian Hare, the defendants respectively, in person. Returned 10th January, 1853.

JESSE GILMON,
Deputy sheriff, parish of Jefferson.

Answer of Brother.

L. B. HORNE
vs.
G. BERNARD et als. } 4915.

THIRD JUDICIAL DISTRICT COURT.

Alexander Brother, syndic of the creditors of Peter Conrey, junior, made defendant herein, in his said capacity now comes, and for answer to the petition of the said plaintiff admits the adjudication of and conveyance of the said property referred to, as stated in the said plaintiff's petition, and he avers that the title of the said plaintiff in virtue thereof is good and valid. Wherefore, defendant denying generally the allegations of said plaintiff not herein specially admitted, prays to be herein dismissed with costs and for general relief.

(Signed) HUNTON & BRADFORD,
Attorneys.

Answer filed January 12th, 1853.

LOUIS B. HORNE
vs.
G. BERNARD et als. } 4915.

THIRD JUDICIAL DISTRICT COURT
Of the parish of Jefferson.

And now comes Glovers Bernard and Christian Hare, the defendants, and for answer to the petition filed against them say, that they do not pretend to hold the property sued for as their own property, but they are the tenants of the Bank of Tennessee, from whom they lease the said property. That their possession as tenants began on the 1st day of May, 1852, as appears by the written act of lease hereto annexed. They allege further, that William B. Chrisp, No. 3, Union street, New Orleans, is the agent of the said bank. They pray that the said Bank of Tennessee be substituted as defendant in this suit; and that they be discharged, and for relief in the premises.

(Signed) STOCKTON AND STEELE,
Attorneys.

Disclaimer and order.

In this case considering the disclaimer in the answer of the defendants, Glovers Bernard and Christian Hare, and their prayer that their lessor be substituted in their stead, and that they be hence dismissed; it is ordered, that the said defendants, Bernard and Hare, be discharged from this suit, and that the Bank of Tennessee, their lessor, be made party in their stead; and further, that this order be served on William B. Chrisp, agent of said Bank of Tennessee.

Answer and call in warranty, and documents.

To the honorable J. C. Clark, judge of the third judicial district court, Louisiana:

The answer of Glovers Bernard and Christian Hare, of said district, shows with respect, that denying all and singular the allegations in the petition contained of Lewis B. Horne, and more particularly that he is the true and legal owner of the property described in said petition; defendants aver, they are in the peaceful and legal possession of said property by virtue of a certain lease, dated 21st September, 1852, granted by Peter Conrey, jr., the owner of said property for a term of years; and also of a lease from William B. Chrisp, agent of the Bank of Tennessee, as owning the same, until the 1st of May, 1854, at the rate of ten dollars per month; said lease dates April 26th, 1852; all made part of this answer.

Respondents aver, that by virtue of said leases, they entered on said land and now reside thereon. That they have promptly and punctually paid the rent to date, and cannot be dispossessed or troubled until the said term arrives, 1st May, 1854, and pray said suit be dismissed with costs; and considering the said leases, they pray that Alexander

Brother, syndic of the creditors of Peter Conrey, jr., and the said W. B. Chrisp, agent of the Bank of Tennessee, be cited in warranty to appear and defend the possession of defendants, and respondents have over and against said parties on their warranty such judgment as may be rendered, if any there be, against respondents, with costs, and fifty dollars, amount of attorneys' fees rendered necessary in the defence of this case; and for all such relief and remedy the law will permit, &c.

(Signed) ELLETT, *of counsel for defendants.*

Articles of agreement

This day entered into between Wm. B. Chrisp, as agent of the Bank of Tennessee, of the one part, and Glovers Bernard and C. Hare, resident of the parish of Jefferson, Louisiana, of the other part, witness: that the said Bank of Tennessee has this day loaned unto Glovers Bernard and Christian Hare aforesaid the square of ground lately owned by Peter Conrey, junior, known as square No. 57 in the town of Rickerville, fronting on the Carrolton railroad, at and for the price of ten dollars per month, payable on the last day of each month; said lease to continue until the 1st day of May, 1854. And the Bank of Tennessee hereby warrants to the said lessee the free and peaceable use and enjoyment of said square against all claims which may or shall be set up thereto by any person whatever, and the said Glovers Bernard and Christian , lessees, agree to pay the said ten (dollars) monthly, as above stipulated, during the period above named, and then to return the said square to the proper agent of said Bank of Tennessee in good order as it is at present.

New Orleans, April 26th, 1852.

Signed in duplicate.

(Signed) WM. B. CHRISP,
Agent of the Bank of Tennessee.

(Signed) GLOVERS BERNARD,

(Signed) CHRISTIAN his ⋈ mark HARE.

Witness—CHARLES A. LABUZAN.

Lease.

Know all men by these presents, that Peter Conrey, jr., hereby lease unto Glovers Bernard and Christian Hare the square of ground situated at Rickerville, fronting the railroad, for three years from 21st September, 1850, to 21st September, 1853. The conditions of this lease are, that the said Glovers Bernard and Christian Hare shall punctually pay or cause to be paid, unto the lessor, or unto his legal representative, the annual rent of one hundred and twenty dollars, payable monthly, and at the expiration of this lease deliver said premises to said lessor in the same good order and condition in which they received them; the ordinary wear and tear, and other unavoidable cause excepted. It is also a

condition of this lease that the said lessees shall not sub-lease said premises without the written consent of the lessor endorsed herein, and comply with the municipal regulations to make all the necessary repairs, and the property to be used as a residence and a garden.

PETER CONREY, JR.,
GLOVERS BERNARD,
his
CHRISTIAN ⋈ HARE.
mark.

Witnesses:
L. A. BEAURIGARD,
P. J. SPEAR.
New Orleans, 21st September, 1850.

Citation.

STATE OF LOUISIANA,
Third judicial district court.

LOUIS B. HORNE
vs. } 4915.
G. BERNARD et als.

Mr. Alexander Brother, syndic of the creditors of Peter Conrey, jr., and William B. Chrisp, agent of the Bank of Tennessee.

You are hereby summoned to comply with the demand contained in the petition and answer in warranty, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the third judicial district court, in the parish of Jefferson, in ten days after the service hereof.

Witness the honorable J. C. Clark, judge of the said court, this 14th day of January, 1853.

(Signed) F. J. LAIZER, *Clerk.*

Sheriff's return.

Received, parish of Orleans, January 15th, 1853, and on 17th of same month served a copy of petition, answer and call in warranty, and citation, on A. Brother in person, and on Wm. B. Chrisp, agent, at his office, Union street, between St. Charles and Carondelet streets, thus, his clerk, a free white person over 14 years of age. Returned January 17th, 1853.

(Signed) E. SAMPSON, *Deputy sheriff.*

Prayer for removal.

To the honorable the district court of the State of Louisiana, for the parish of Jefferson.

The petition of the President, Directors, and Company of the Bank of Tennessee, citizens of the State of Tennessee, a duly incorporated banking company, located and doing business as bankers in the said

State of Tennessee, respectfully shows: That Lewis B. Horne, a resident of New Orleans, and a citizen of the State of Louisiana, has instituted his suit against your petitioners, through their tenants, Glovers Bernard and Christian Hare, before your honorable court, to recover from petitioners the square of ground lying in the town of Rickerville, in the parish of Jefferson, known upon the original plan of said town of Rickerville as square number 57, which square is more fully described and set forth in the petition, and is worth at least five thousand dollars. That your petitioners are the only real defendants in the said suit, and they, as citizens of Tennessee, are entitled to remove this cause to the circuit court of the United States, for the eastern district of Louisiana, on or before the first day of the next term thereof.

They hereby do offer to give bond with good security in such sum as the court shall direct, to insure the filing of said suit in the United States circuit court, for the eastern district of Louisiana, on or before the day of April, 1853, being the first day of the next term thereof.

They pray that this court order that the said cause be removed to the said circuit court, and filed therein as above stated, then and there to be proceeded in according to law.

(Signed) STOCKTON & STEELE,
Attorneys.

Order.

On motion of Stockton & Steele, of counsel for the President, Directors and Company of the Bank of Tennessee, upon their presenting their petition to that effect, and upon their showing to the court that the matter in controversy in this suit is stated in the plaintiffs' petition to be and is over the value of $500; and that the said Bank of Tennessee is in fact the only defendant in said suit. It is ordered that upon their giving bond and security in the sum of one hundred and fifty dollars, to secure the payment of the costs to be incurred, and that they will file the record of this suit in a transcript thereof in the United States circuit court, for the eastern district of Louisiana, at New Orleans, on or before the first day of the next term thereof, to be holden in April, 1853, this case to be removed to the said circuit court, then and there to be proceeded in according to law.

Filed 24th Jan'y, 1853.

(Signed)

Order.

THIRD JUDICIAL DISTRICT COURT, 1*st February*, 1853.

On motion of defendants, and on showing to the court that they have been sued in this honorable court, by Lewis B. Horne, def't, and that the rent of said property is demanded in said suit, and on showing that the title to said property is now in dispute, and that deft's paying rent either to plaintiff or to the warrantors of def't, def't might be damaged:

It is therefore ordered that def'ts be authorized to pay the monthly rent of said premises, viz., ten dollars, to the clerk of this court, who is required to receive the same until the decision of this court decreeing to whom the said rent belongs.

(Signed) J. C. CLARK, *Judge.*

Motion.

No. 4915 of the honorable third judicial district court of Louisiana.

LOUIS B. HORNE
vs.
G. BERNARD et als. } 4915.

On motion of H. D. Ogden, of counsel for plaintiff, and on suggesting to the court that the President, Directors and Company of the Bank of Tennessee, called in warranty by deft's, Glovers Bernard & Christian Hare, have by counsel come into court and obtained an order ex-parte from this honorable court to have the said suit removed to the circuit court for the eastern district of Louisiana, at New Orleans: It is ordered that the said president, directors and company of the Bank of Tennessee show cause on Saturday, the 5th day of March next, at 10 o'clock a. m., why the said order should not be rescinded, and plaintiff authorized to proceed to judgment in this honorable court, on the grounds:

1st. That from the face of the proceedings, it appears that this is not a case authorizing the removal of a suit.

2. That the parties are not the true and real def'ts in the suit; that the suit is between residents of the State.

3. That the said Bank of Tennessee is called in warranty, and that, as such, they could not be sued in the federal courts.

4. That the said federal courts would have no jurisdiction in the premises.

5. That the said President, Directors and Company of the Bank of Tennessee have not complied with the formalities and requisites of the law to obtain said removal.

Monday, February 28th, 1853.—Present, Hon. J. C. Clark, judge.

LOUIS B. HORNE
vs.
G. BERNARD et als. } 4915.

On motion of H. D. Ogden, of counsel for plaintiff, and on suggesting to the court that the President, Directors and Company of the Bank of Tennessee, called in warranty by def'ts, Glovers Bernard & Christian Hare, have by counsel come into court and obtain an order ex-parte from this honorable court to have said suit removed to the circuit court of the eastern circuit court of Louisiana, at New Orleans, it is ordered that the President, Directors and Company of the Bank of Tennessee

show cause on Saturday, the 5th March next, at 10 o'clock a. m., why the said order should not be rescinded, and petitioner authorized to proceed to judgment in this honorable court on the grounds filed.

Extract from the minutes.

(Signed) F. J. LAZIER, *Clerk.*

Sheriff's return.

LOUIS B. HORNE
vs.
G. BERNARD et als. } 4915.

Rule. H. D. OGDEN, *Att'y.*

Rec'd, parish of Orleans, March 2d, 1853, and on the same day served a copy of the within rule on defendants, thus, A. T. Steele, esq., their att'y, in person. Returned same day.

(Signed) E. SAMPSON,
Dep'y sheriff, Parish of Orleans.

Judgment on rule.

In the third district court of Louisiana for the parish of Jefferson.

LOUIS B. HORNE
vs.
G. BERNARD et als. } 4915.

On a rule taken by the plaintiff, calling on the Bank of Tennessee to show cause why the order of court made at the instance of said bank, ordering this cause to be removed to the circuit court of the United States, for this district, should not be set aside, the court thinks the rule must be discharged for the following reasons:

1. Alexander Brother is not a party defendant in this suit; if he is a party at all he is a plaintiff.

2. The original defendants, Glovers Bernard and Christian Hare, were mere lessees of the Bank of Tennessee, as appears by their answer, filed by their attorneys, Stockton & Steele, on the 12th day of January, 1853; and as they disclaim title to the property, and indicate the Bank of Tennessee as their lessor, they were properly discharged from the suit, by order of court, on the 12th January, 1853, and the Bank of Tennessee substituted in their stead. The Bank of Tennessee is sole proper def't in the suit since the date of the order substituting said bank as defendant, instead of said original defendants.

It is ordered, therefore, adjudged and decreed, that said rule, taken by plaintiff to receive the order of court removing this cause to the circuit court of the United States for the eastern district of Louisiana, be dismissed at plaintiff's costs.

STATE OF LOUISIANA,
Parish of Jefferson, third judicial district court of Louisiana.

I hereby certify that the foregoing 19 pages contain a full and cor-

rect transcript of all the proceedings had in this case, and true copy of all the documents on file.

Witness my hand and the seal of said court at the parish of Jefferson, the 14th day of April, 1853.

[SEAL.]

E. BUISSON, *Dep'y cl'k.*

Act of sale—Alexander Brother to Lewis B. Horne.

Filed, April 18, 1853.

STATE OF LOUISIANA,
City of New Orleans.

Be it known, that this day before me, Theodore Osburn Stark, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Alexander Brother, esq., of this city herein, acting in his capacity of syndic of the creditors of Peter Conrey, junior, an insolvent debtor also of this city, who declares that, whereas by virtue of an order of the honorable the second district court of New Orleans, rendered on the 8th day of March instant, he caused certain properties surrendered by the said Conrey to his said creditors to be sold at public auction by Messrs. J. A. Beard & May, duly licensed auctioneers for this city and parish, at the arcade Exchange, or Magazine street, on the 19th day of May, 1852, after the usual and legal advertisements had been made, at which sale or adjudication Lewis B. Horne, esq., of this city, became the purchaser of the property hereinafter described, as the last and highest bidder thereon, for the price and sum of four thousand six hundred and forty dollars, all which will more fully appear by reference to the proces verbal of the said auctioneers, annexed to an act of deposit in this office, under date of the 28th day of May instant.

Now, therefore, in confirmation of said adjudication, and in order to give to the said purchaser a more formal and legal title to the said property, the said appearer moreover declared that he does, in his capacity aforesaid, by these presents, grant, bargain, sell, convey, and deliver unto the said Lewis B. Horne, present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, all and singular, a certain square of ground situated in the town of Rickerville, parish of Jefferson, in this State, and measuring two hundred and eighty feet one inch and six lines front on Nayades street, two hundred and seventy feet front on St. Denis street, four hundred and fifty-four feet four inches and two lines front on Joseph street, and five hundred and thirty feet three inches and four lines front on Octavia street, and subdivided into thirty-two lots numbered from 1 to 32 inclusive, as per plan drawn by C. A. Hedin, architect, on the 23d April, 1852, and deposited in this office as plan No. 113.

The said square was acquired by the said Conrey from the City

Bank, on the 27th June, 1849, as per act before J. R. Beard, then notary in this city, and is free from all mortgage or incumbrance in the name of said Conrey, as will be seen by reference to the annexed certificate of the recorder of mortgages for the said parish of Jefferson.

The said square is also designated on the original plan of the town of Rickerville, deposited in the office of J. R. Beard, late notary in this city, as square No. "57."

To have and to hold the said square, rights, &c., unto the said purchaser, his heirs and assigns forever; and the said vendor, in his said capacity of syndic and none other, the said square, rights, &c., herein conveyed to the said purchaser, his heirs and assigns, shall and will warrant and forever defend against all legal claims and demands whatsoever. And the said vendor, in his said capacity, moreover, transfers unto the said purchaser all and singular the rights and actions of warranty to which the said Conrey was or is entitled, against any and all of the former owners of the square, &c., herein conveyed, hereby subrogating the said purchaser in and to the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been by the said Conrey.

This sale is made and accepted for and in consideration of the price and sum of four thousand six hundred and forty dollars, in liquidation of which, and in accordance with the said adjudication, the said purchaser has paid the sum of eleven hundred and sixty dollars in ready current money, at the execution of these presents, and for the balance has furnished his three several promissory notes, each for a like sum of eleven hundred and sixty dollars, dated on the said 19th day of May, 1852, and made payable, respectively, in six, twelve, and eighteen months after date, with interest at the rate of 6 per cent. per annum, from date to maturity, and thereafter, if not then paid, at 8 per cent. per annum, which said notes, after having been paraphed by the notary to identify them with this act, were delivered to the said vendor, who hereby acknowledges the receipt thereof, as well as of the said ready money, and grants acquittance therefor.

And in order to secure the punctual payment of the said notes at maturity, as well as of the interest which may accrue thereon, the said purchaser declared that he hereby specially mortgages and hypothecates the said property to the said vendor, promising and binding himself not to alienate or encumber the same to the prejudice of this mortgage.

Thus done and passed in my office, at the city of New Orleans aforesaid, in the presence of George W. Christy and Edward Allen, witnesses of lawful age and domiciliated in this city, who hereunto subscribe their names, together with the said parties, and me, the said notary, this twenty-eighth day of August, in the year of our Lord one thousand eight hundred and fifty-two.

Original signed A. BROTHER, *Syndic of P. Conrey, jr.*,
LOUIS B. HORNE.

E. ALLEN,
GEO. W. CHRISTY.

THEODORE O. STARK, *Not. Pub.*

I, the undersigned notary, representing Theodore O. Stark, also a notary of this city, now temporarily absent from this State by consent of the governor thereof, do hereby certify the foregoing to be a true copy of the original act passed before said Stark, and on file and of record in his office.

In faith whereof, I grant these presents under my signature and the impress of my seal of office, at New Orleans, this 31st day of August, 1852.

[SEAL.]

WILLIAM L. POOLE, *Notary Public.*

Memorandum written on the margin of the foregoing.

Registered in conveyance book C, folio 607, parish of Jefferson, La., September 6, 1852.

J. L. BORGSTEDE, *Recorder.*

Exception of Bank of Tennessee.

Filed with transcript, 18th April, 1853.

UNITED STATES CIRCUIT COURT,
For the eastern district of Louisiana.

LEWIS B. HORNE
vs.
GLOVERS BERNARD & als.

And now come the President, Directors and Company of the Bank of Tennessee, citizens of the State of Tennessee, a corporation duly incorporated by the laws of the said State of Tennessee, and file this their exception to answering the suit which the plaintiff Lewis B. Horne has brought against them, and say, that the plaintiff cannot proceed at the same time and in the same suit against these respondents, to recover from them the square of ground which he claims, and against Alexander Brother, syndic of the creditors of Peter Conrey, to recover from him the price which he pretends to have paid therefor. The plaintiff must decide for himself which claim he will prosecute; the existence of the one is inconsistent with that of the other; and furthermore they object, that the plaintiff cannot call in a warrantor to prosecute a suit which he himself brings; they therefore except to so much of the plaintiff's petition as sets forth his claim against said Alexander Brother, and prays relief against him, and they pray that the plaintiff be compelled to amend his petition by striking therefrom all the part of said petition thus objected to.

STOCKTON & STEELE, *Attorneys.*

Answer—Filed 29th April, 1853.

UNITED STATES CIRCUIT COURT,
For the eastern district of Louisiana.

LEWIS B. HORNE
vs.
G. BERNARD & als.

And now come the President, Directors and Company of the Bank

of Tennessee, citizens of the State of Tennessee, incorporated as a banking company by the laws of said State of Tennessee, and insisting upon the exceptions heretofore made and filed by them, deny each and every allegation made in the plaintiff's petition, except as is herein below admitted.

They admit that they are in possession and enjoyment of the square of ground described in the said petition, and aver that they have been in possession and enjoyment thereof, since the 27th day of March, 1852, and they are now receiving and collecting the sum of ten dollars per month as rent for the use thereof.

They admit that the said square of ground was purchased by Peter Conrey, jr., from the City Bank of New Orleans, on the 27th day of June, 1849, as stated in the plaintiff's petition; and they aver, that the said Peter Conrey remained in the possession and enjoyment of the said square of ground until the 13th day of February, 1852. They aver, that on the 13th day of February, 1852, the United States marshal for this district, acting in obedience to a writ of fi. fa., issued from your honorable court on the day of 1852, in the suit of your respondents against Peter Conrey, jr., seized and took into his possession the said square of ground as the property of the defendant, Peter Conrey, jr.; and after due proceedings had in the premises, on the 27th day of March, 1852, he sold said square of ground to your respondents for $2,500, of all which sale and possession due notice was given to Lewis B. Horne, the plaintiff, before his purchase, both by the recording of the deed made by the said marshal to respondents, and by a notice personally given to the said Horne by the agent of the bank.

That the said plaintiff, Lewis B. Horne, never had possession of said square of ground, and that Alexander Brother, the syndic of Peter Conrey, jr., (if he is syndic or has any authority or right as syndic, which is denied,) never had possession of said square of ground; and that if any surrender of this piece of property ever was made by said Conrey for his creditors, which is denied expressly, it was long after the marshal took the same into possession, and with the design of defeating the jurisdiction of this court. And further answering, respondents deny that there was ever any assignment of this or of any other property of the said Peter Conrey, jr., either to Alexander Brother or to his creditors, which can have any legal effect against their rights as citizens of the State of Tennessee.

And they further aver, that the whole State insolvent law is unconstitutional and void, so far as it concerns the *the* rights and remedies of persons living out of Louisiana. Respondents therefore pray judgment, decreeing that they own the said land sued for in plaintiff's petition, and for costs of suit.

STOCKTON & STEELE,
Attorneys for respondent.

And on the 18th day of May, 1853, the following continuance was recorded on the minutes:

LEWIS B. HORNE
vs.
G. BERNARD & als. } 2241.

This cause was postponed by consent of parties until Saturday, the 21st instant.

Continuance—ordered and recorded in the minutes, May 21, 1853.

LEWIS B. HORNE
vs.
G. BERNARD & als. } 2241.

This cause is continued by consent of counsel, to be submitted on briefs to a full court.

Submission as entered of record in the minutes, May 28th, 1853.

Present, honorable J. A. Campbell, presiding judge; present, honorable Theo. H. McCaleb, district judge.

LEWIS B. HORNE
vs.
G. BERNARD & als. }

This cause was taken up by consent, and after argument of counsel was submitted to the court and taken under advisement.

Agreement to submit the case.

LEWIS B. HORN
vs.
BERNARD and HARE, and Bank of Tennessee substituted, defendant. } No. 2241.

We hereby agree to submit the case upon the agreements filed herewith, (and marked A and B;) the copy of petition of Conrey, and orders thereon, and proceedings had before the second district court of New Orleans, (marked C;) copy of lease from Peter Conrey, jr., to Bernard and Hare, (marked D;) and letter of A. Brother to the U. S. marshal, read to the crowd before the sale to the Bank of Tennessee, (marked E;) record in case of the Bank of Tennessee *vs.* Peter Conrey, jr , No. 2046, on the docket of this court, with the writs of fi. fa., and returns, and sheriff's deed and certificates of record, and the notice which was read to the crowd before the syndic; sale to Lewis B. Horne by Charles A. Labuzan, (marked F;) lease from the Bank of Tennessee to Bernard and Hare, (marked H.)

H. D. OGDEN,
For plaintiff.
STOCKTON & STEELE,
For defendants and Bank of Tennessee.

Document "A," referred to in the foregoing agreement.

LEWIS B. HORNE
vs.
G. BERNARD and C. HARE, et als.

In the United States circuit court, 5th circuit.

Testimony and facts admitted and offered in evidence on behalf of the plaintiff:

1. It is admitted that Peter Conrey, jr., on the 27th June, 1849, purchased from the city bank, by act passed before J. R. Beard, then a notary public, a square of ground situated in Rickerville, parish of Jefferson, and designated on the original plan of said town of Rickerville as square No. 57.

2. It is admitted that, on 7th November, 1851, said Conrey filed his petition in the 2d district court of New Orleans, praying to be admitted to the benefits of the insolvent laws of this State, and that on the same day the cession was accepted for the benefit of the creditors. (See petition and order herewith filed.)

3. It is admitted that said Conrey filed his schedule on the same day, (7th Nov. 1851.)

4. That prior to said surrender said Conrey had not been divested of his ownership in and to the said property.

5. That the surrender of said Conrey was accepted, and Alexander Brother was elected syndic at a meeting of the creditors duly convened by an order of court, and that the copy of the proceedings of said meeting, and the petition of said Brother to be appointed and confirmed as syndic, were filed in court on 29th December, 1851.

6. That judgment was rendered recognising and appointing said Brother syndic on 10th January, 1852.

7. That on the 8th March, 1852, the syndic petitioned, approved, and obtained an order to sell the real estate surrendered by the insolvent and vesting in the syndic. (See petition and order herewith filed.)

8. That in pursuance to said order, and after all the due formalities were complied with, the said square No. 57 was adjudicated to the plaintiff on the 19th May, 1852. See act of sale on file which is offered in evidence.

9. That said square is the same described in plaintiff's petition.

10. That on the schedule filed by Conrey in his insolvent proceedings, the Bank of Tennessee is placed thereon as a creditor.

11. That it does not appear from an examination of the books of the parish recorder of the parish of Jefferson, that said Conrey was ever the owner of squares Nos. 5 and 7, or of either of them.

12. That Conrey leased said property on the 21st September, 1850, unto G. Bernard and C. Hare, from said 21st September, 1850, to 21st September, 1853.

13. That said Bernard and Hare refused to deliver possession or to pay any rent to plaintiff, on the ground that they occupy the pre-

mises by virtue of a lease in their favor from the Bank of Tennessee, given subsequently to the surrender of said Conrey.

14. That at the time of offering for sale the said square No. 57, on April, 1852, by the U. S. marshal, in the suit of the Bank of Tennessee vs. said Conrey, Mr. George May stated that at the request of Mr. Brother, the syndic, he gave notice that said Conrey had taken the benefit of the insolvent laws and made a surrender of his property, and that the purchaser would derive no title from the adjudication, and that said May also gave to the marshal a note to the same effect, and that the marshal did read the note to the public at the time of the sale to the Bank of Tennessee, and which is marked (E.)

15. It is admitted that after the notice marked (F) was read to the crowd, Jos. A. Beard, the auctioneer, stated that at the request of the syndic he was authorized to say that the title of the Bank of Tennessee was worthless; and that the title to be given by the syndic was good, and that every thing would be made right.

Admissions—Document marked B, referred to in the agreement.

LEWIS B. HORNE
vs.
BERNARD & HARE, and
Bank of Tennessee substituted defendant.

It is admitted that the original schedule or bilan contains the following description of property, to wit: "five squaros" "of ground Nos. 1, 8, 5, 7, and 45, in the town of Rickerville, parish of Jefferson, $18,000; and that the square 57, in the town of Rickerville, is not placed on the said schedule unless the description is contained in the words above quoted.

It is admitted that the Bank of Tennessee has not made herself a party to the insolvent proceedings in the second district court of New Orleans, and that she has not appeared in said court for any purpose whatever.

It is admitted that the notice marked (F) was read to the crowd immediately before the sale made at auction by the syndic of the square 57, to Lewis B. Horne, and also that he was personally notified of the existence and nature of the title of the Bank of Tennessee, before he paid his money or received the title under which he claims.

Transcript from second district court.—Document marked "C," referred to in the agreement.

Second district court of New Orleans.

PETER CONREY, Jr.,
vs.
HIS CREDITORS. } No. 4752.

Petition—Filed 7th November, 1851.

To the honorable the judge of the second district court of New Orleans.

The petition of Peter Conrey, jr., who resides in this city, respect-

874.

fully represents: That being a dealer in exchange, he sold his bills of exchange, drawn on the firm of Samuel Jaudon & Company, of New York, and remitted to them the funds to pay said bills, to wit, more than five hundred thousand dollars; the said firm did not appropriate petitioner's money to the payment of said bills of exchange, but permitted them to be protested. Your petitioner has endeavored to obtain from said firm the sum remitted, or its equivalent, but has not been able to do so because of the failure of said firm of S. Jaudon & Company.

Your petitioner's affairs have thus been thrown into great embarrassment by the return of his protested bills, for which he has been unable to provide, and it has become impossible for him to continue his business, or to meet his engagements; many of his creditors have instituted suit against him, and others threaten to sue him. He therefore, that his property should be fairly distributed among his creditors, *and* has prepared a schedule of his affairs; which, with his commercial books, is herewith filed. Petitioner prays that a meeting of his creditors be convened; that a cession of his property be accepted by the court for the benefit of his creditors, and in the mean time all proceedings against him be stayed. That petitioner be admitted to the benefit of the laws relative to the voluntary surrender of property; and that, after due proceedings had in the premises, he be discharged according to law; and he prays for general relief.

(Signed) GOOLD & HOWARD,
" BENJAMIN & MICOU,
Attorneys.

Order.

Upon reading and filing the annexed schedule and petition in this case, it is ordered that the cession of petitioner's property be accepted for the benefit of his creditors; that a meeting of said creditors be convened before A. A. Baudoin, esq., notary public, on Saturday, the thirteenth day of December next, at 10 o'clock, a. m., to take into consideration the affairs of said petitioner, and that in the mean time all proceedings against his person and property be stayed; and let Jacob S. Halsey, esq., attorney and counsellor-at-law, be appointed to represent the absent creditors in this case.

New Orleans, 7th November, 1851.

(Signed) J. N. LEA, *Judge.*

Petition praying for sale—Filed 8th March, 1852.

PETER CONREY, Jr., vs. HIS CREDITORS. } 2d district court.

To the honorable the judge of the second district court of New Orleans.

The petition of Alexander Brother, of said New Orleans, herein acting in his capacity as syndic of the aforesaid creditors, respectfully

shows: That a meeting of said creditors was duly held before T. O. Stark, notary public, in pursuance of the order of this honorable court, as will appear from the proces verbal of the proceedings of the said meeting, hereto annexed for reference.

Wherefore petitioner prays that the proceedings of said meeting be approved and homologated; that the property surrendered by the said insolvent, and vesting in petitioner, be sold, in accordance with the terms fixed by the said creditors; and that the said sale be made at public auction, by J. A. Beard & May, public auctioneers, after legal advertisements of all the property aforesaid, except the household furniture—excepted by the said creditors; and for all further aid and relief needful in the premises.

(Signed) HUNTON & BRADFORD,
Attorneys.

"*Order.*"

Let the accompanying deliberations of the meeting of the creditors in this case be approved and homologated, and according thereto let the sale within prayed for be made by Beard & May, auctioneers, after the legal advertisements, and on the terms and conditions following, viz: The real-estate one-fourth cash, and the balance at six, twelve, and eighteen months, with interest from date, at the rate of six per cent. per annum, to maturity, and afterwards at the rate of eight per cent. per annum till paid; the property specially mortgaged to be sold as required by the mortgaged creditors up to an amount sufficient to discharge the special mortgages, and the balance payable at six and twelve months. The movable property and slaves for cash.

New Orleans, 8th March, 1853.

(Signed) J. N. LEA, *Judge.*

[SEAL.] A true copy from the originals on file. Clerk's office, 2d district court.

GASP'D JAMES,
Deputy clerk.

Lease.—Document marked (D), referred to in the agreement.

Know all men by these presents that Peter Conrey, jr., hereby lease unto Glovers Bernard and Christian Hare the square of ground situated at Rickerville, fronting the railroad, for 3 years from 21st September, 1850, to 21st September, 1853. The conditions of this lease are, *are:* That the said Glovers Bernard and Christian Hare shall punctually pay or cause to be paid unto the lessor, or to his legal representative, the annual rent of one hundred and twenty dollars, payable monthly, and at the expiration of this lease deliver said premises to said lessor in the same good order and condition in which they received them, the ordinary wear and tear and other unavoidable causes excepted.

It is also a condition of this lease that the said lessee shall not sub-lease said premises without the written consent of the lessor endorsed hereon, and comply with the municipal regulations to make all the

necessary repairs, and the property to be used as a residence and a garden.

New Orleans, 21st September, 1850.

PETER CONREY, JR., [L. S.]
GLOVERS BERNARD, [L. S.]
his
CHRISTIAN ⋈ HARE. [L. S.]
mark.

Witness—L. N. BEAURIGARD,
P. J. SPEAR.

Document marked E, referred to in the agreement.

BANK OF TENNESSEE
vs.
PETER CONREY, jr. } No. 2046.

In the U. S. circuit court, eastern district, Louisiana.

SAME
vs. } No. 2065. In same court.
SAME.

To the marshal of eastern district of Louisiana.

SIR: By virtue of certain writs of fieri facias in the above suits, you have seized and advertised for sale on the 27th and 31st days of March, 1852, certain squares and parcels of ground lying in the parish of Jefferson, and more particularly described in your official advertisement of the sale.

As the syndic of the creditors of P. Conrey jr., an insolvent, and the defendant in the said suits, I am the owner and in possession of said parcels of ground; and they are not, nor is any part thereof, liable to be seized or sold by virtue of said writs of fieri facias against the said Conrey. Inasmuch as I do not wish any bidder to be deceived, I will thank you, at the time of sale, whenever it occurs, to give public notice to the bidders of my claim; and I shall consider all persons as trespassers who interfere with my possession as syndic.

I am, respectfully,
A. BROTHER,
March 19th, 1852. *Syndic of P. Conrey, jr.*

Endorsed as follows: "Received, March 22, 1852.
CHARLES A. LABUZAN,
Deputy marshal."

Document marked (F), referred to in the agreement.

I have been requested by the Bank of Tennessee to state, in her behalf, that she owns and is in possession of one square of ground lying and being in the town of Rickerville, in the parish of Jefferson, and numbered fifty-seven, (57,) as per plan drawn by B. Buisson and W. Thornton Thompson, on the 23d day of March, 1839, and deposited

at this time in the office of James Graham, notary public, New Orleans; said lot or square of ground having a front of 280 feet 1 inch and 6 lines on Nayades street, 287 feet on St. Denis street, 454 feet 4 inches and 4 lines on St. Joseph street, and 530 feet 3 inches and 4 lines on Octavia street; and of nineteen squares of ground lying and being in the parish of Jefferson, designated by the numbers 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142, 143, 144, and letter A, upon the plan of a property lying in the rear of the suburbs Bouligny, Delachaisse, Delassize, etc., and owned by Peter Conrey, jr., William A. Gasquet, Henry Parish, D. Parish, and Victoire Currel, made or drawn by Benjamin Buisson, dated 17th February, 1846, and deposited in the fourth district court of New Orleans, with the suit of Peter Conrey, jr., et als., vs. C. Currel.

That she purchased said properties at sales legally made by the U. S. marshal for the eastern district of Louisiana, and in the name of said bank I notify all bidders, that in case said property, or any portion thereof, should be sold, or attempted to be sold, by order of the syndic of the creditors of Peter Conrey, jr., that the said Bank of Tennessee will not surrender any of said property unless compelled by law so to do; and that she denies entirely the right of the said syndic to sell or cause to be sold any portion thereof.

Endorsed as follows:

I read this notice on the 19th May, 1852, before the sale made by P. Conrey, jr., syndic of the property within named.

CHAS. A. LABUZAN.

Document marked (H), referred to in the agreement.

Articles of agreement this day entered into between William B. Chrisp, as agent for the Bank of Tennessee, of the one part, and Glovers Bernard and Christian Hare, resident of the parish of Jefferson, Louisiana, of the other part, witness:

That the said Bank of Tennessee has this day leased unto Glovers Bernard and C. Hare, aforesaid, the square of ground lately owned by Peter Conrey, jr., known as square No. 57, in the town of Rickerville, fronting on the Carrolton railroad, at and for the price of ten dollars per month, payable on the last day of each month, said lease to continue until first day of May, 1854; and the Bank of Tennessee hereby warrants to the said lessee the free and peaceable use and enjoyment of said square against all claims which may or shall be set up thereto by any person whatever; and the said Glovers Bernard and C. Hare, lessees, agrees to pay the said ten dollars monthly, as above stipulated, during the period above named, and then to return the said

square to the proper agent of said Bank of Tennessee in good order as it is at present.

New Orleans, April 26th, 1852.

Signed in duplicate.

W. B. CHRISP,
Agent per Bank of Tennessee, trustee.

his
CHRISTIAN ⋈ HARE,
mark.

GLOVERS BERNARD.

Signed in presence of—
CHAS. A. LABUZAN.

Record in the case of the Bank of Tennessee vs. Peter Conrey, jr., No. 2046 on the docket of the circuit court of the United States, 5th circuit, and eastern district of Louisiana. Referred to in the agreement on page of this transcript.

Petition of the Bank of Tennessee.

Filed 14th October, 1851.

To the honorable the judges of the circuit court of the United States, holding its sessions at New Orleans, for the eastern district of Louisiana:

The petition of the President, Directors, and Company of the Bank of Tennessee, a corporation duly and legally created by the laws of the said State of Tennessee, located and doing business in said State, and being citizens thereof, respectfully shows: That Peter Conrey, jr., a citizen of the State of Louisiana, residing in New Orleans, in the eastern district of said State, justly and legally owes your petitioners the sum of eleven thousand dollars of principal debt, evidenced by his two bills of exchange, described as follows:

1st. His bill for ($6,000) six thousand dollars, dated April 24th, 1851, at New Orleans, in which he directs Messrs. S. Jaudon & Co., of New York, to pay to the order of himself the said sum of six thousand dollars, seventy days after the date thereof; which bill he endorsed in blank and gave to William B. Chrisp, the agent of petitioners, for the said sum of money then paid to him.

2nd. His bill for ($5,000) five thousand dollars, dated May the 6th, 1851, at New Orleans, in which he directs Messrs. S. Jaudon & Co., of New York, to pay to the order of himself the said sum of five thousand dollars, one hundred days after the date thereof; which bill he endorsed in blank and delivered to William B. Chrisp, the agent of petitioners for the said sum of money then paid to him. That each of said bills was afterwards duly presented to the drawers, S. Jaudon & Co., at their counting-house in the city of New York, for acceptance, and was by them accepted by writing across the face thereof "Payable at the Phenix Bank, S. Jaudon & Co.," thereby making said bills pay-

able at the Phenix Bank. That when the said bills severally fell due they were severally, duly, and legally presented at the said Phenix Bank, and their payment severally demanded and refused; whereupon they were each legally protested for non-payment, and due and legal notice thereof given to the said Peter Conrey, jr.; by means of all which he became bound to pay the said sum of ($11,000) eleven thousand dollars, and the further sum of five hundred and fifty dollars, damages allowed by law upon protested bills of exchange, being five per cent. upon the amount of said bills, the cost of protest and interest from the days on which they were severally protested, at the rate of seven per cent. per annum; that is, upon six thousand dollars from the 5th day of July, 1851, till paid, and upon five thousand dollars from the 16th day of August, 1851, till paid. That the laws of New York, when said bills were payable by contract, allow seven per cent. per annum interest upon all protested bills of exchange from the time they fell due until their payment. That the costs of protests were five dollars.

The premises considered, your petitioners pray that the said Peter Conrey, jr., be cited to answer this petition. That after due and legal proceedings had herein, judgment be rendered in favor of plaintiffs against said Peter Conrey, jr., for the sum of eleven thousand dollars debt, with seven per cent. per annum interest upon $6,000, from and after the 5th July, 1851, till paid, and upon $5,000 at the same rate, from the 16th August, 1851, till paid; and also for the further sum of five hundred and fifty dollars damages and interest from judicial demand, and five dollars costs of protest and costs of suit.

STOCKTON & STEELE,
Attorneys for plaintiff.

Citation.

The President of the United States of America, to the marshal of the eastern district of Louisiana, greeting:

BANK OF TENNESSEE
vs.
PETER CONREY, jr. } No. 2046.

You are hereby commanded to summon Peter Conrey, jr., a citizen of the State of Louisiana, to comply with the demand of the President, Directors, and Company of the Bank of Tennessee, citizens of the State of Tennessee, contained in the petition, of which a copy accompanies this citation, or to deliver his answer to the same, in the office of the clerk of the circuit court of the United States, fifth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due return hereof on the first Monday of November, 1851.

Witness the honorable R. B. Taney, Chief Justice of the Supreme Court of the United States of America, at the city of New [SEAL.] Orleans, this 14th day of October, A. D. one thousand eight hundred and fifty-one, and of the independence of the United States of America the 76th year.

J. W. GURLEY, *Clerk.*

Marshal's return—as endorsed on the original citation.

Received this 14th day of October, 1851, and on the 14th day of October, 1851, served copies of the within citation, plaintiff's petition and documents annexed, on the within named Peter Conrey, jr., in the manner following, to wit: by handing the same to him in person, at his office in New Orleans. Returned October 21, 1851.

JULIEN BOUNY,
D'y U. S. Marshal.

Judgment by default, entered of record in the minutes, December 16th, 1851.

Present, honorable Theodore H. McCaleb, district judge.

BANK OF TENNESSEE
vs. } No. 2046.
PETER CONREY, jr.

December term, A. D. 1851.

On motion of Steele, esq., on behalf of plaintiffs, and on showing to the court that the process of citation issued in this cause has been duly served upon the defendant, and that said defendant has failed to plead or answer to plaintiff's petition within the legal delay; it is ordered that judgment by default be entered herein against the said defendant, Peter Conrey, jr.

And afterwards, to wit, on the 20th day of December, 1851, a final judgment was rendered in this case, and entered of record on the minutes, and on the 26th day of December, 1851, the said final judgment was duly recorded in the judgment docket, and signed in the words and figures following, to wit:

Circuit court of the United States, fifth circuit and eastern district of Louisiana. December term, A. D. 1851.

NEW ORLEANS, *Saturday, 20th December*, 1851.

Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge. Absent, Hon. J. McKinley, presiding judge.

BANK OF TENNESSEE
vs. } 2046.
PETER CONREY, jr.

By reason of the default herein entered, and of the law and the evidence, it is now ordered, adjudged, and decreed, that the plaintiffs, the

President, Directors, and Company of the Bank of Tennessee, do have and recover judgment against the defendant, Peter Conrey, jr., for the sum of six thousand dollars, with interest thereon at the rate of seven per cent. per annum, from the 5th day of July, 1851, until paid, and for the further sum of five thousand dollars, with interest thereon at the rate of seven per cent. per annum, from the 16th day of August, 1851, until paid; and the sum of five hundred and fifty dollars damages, with five per cent. per annum interest thereon from the date of this judgment until paid, and one dollar and fifty-five cents costs of protest, and costs of suit to be taxed.

Judgment rendered 20th December, 1851. Judgment signed 26th December, 1851.

THEO. H. McCALEB, *U. S. judge.* [SEAL.]

Circuit court of the United States, for the fifth circuit, holding sessions in and for the eastern district of Louisiana.

The President of the United States, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded, that you demand from Peter Conrey, jr., the sum of six thousand dollars, with interest thereon at the rate of seven per cent. per annum, from the 5th day of July, 1851, until paid, and for the further sum of five thousand dollars, with interest thereon at the rate of seven per cent. per annum, from the 16th day of August, 1851, until paid, and the sum of five hundred and fifty dollars damages, with five per cent. per annum interest thereon from the date of this judgment (26th December, 1851,) until paid, and one dollar and fifty-five cents costs of protests, and costs of suit—clerk's costs $21 50, marshal's fees (Scott) $336 55—cash, which the Bank of Tennessee lately recovered by judgment of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana; and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said Peter Conrey, jr., except slaves, in your district, if sufficient personal estate exclusive of slaves can be found therein; but if sufficient personal estate, exclusive of slaves, cannot be found in your district, that then you cause the sum to be made out of the real estate and slaves of the said Peter Conrey, jr., in your district, whereof he was owner on the 26th December, A. D. 1851, into whose hands soever the same may have come; and that you have those moneys before our said court, to render to the said Bank of Tennessee for the judgment aforesaid, on the seventieth day from this date, together with this writ.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States, this tenth day of January, A. D. [SEAL.] 1852, and seventy-sixth year of the independence of the United States.

Clerk's costs - - - - $
Marshal's fees - - - - $
Mileage - - - - $

J. W. GURLEY, *Clerk.*

Marshal's return on the foregoing writ of fi. fa.

Received January 10th, 1852, and after demand of defendant Peter Conrey, junior, who said the same could not be paid, I seized on the 12th February, 1852, the following described property, to wit, one square of ground, lying and being in the town of Rickerville, in the parish of Jefferson, and numbered (57) fifty-seven, as per plan drawn by B. Buisson and W. Thornton Thompson on the 23d March, 1839, and deposited at this time in the office of James Graham, N. P., New Orleans.

"Said lot of ground having a front of 280 feet 1 inch and 6 lines on Nayades, 287 feet on St. Denis street, 454 feet four inches and 4 lines on St. Joseph street, and 530 feet 3 inches and 4 lines on Octavia street." Advertised the same in the French and English languages in the New Orleans Bee and Louisiana State Republican, parish of Jefferson, for cash; sale to take place at the Court Exchange, a coffee house at the corner of Rosseau and Phillip streets, parish of Jefferson, on the 27th March, 1853, at the hour of 12 o'clock, m., being full thirty days from date of first publication, after appraisement of said property. On the day, at the place, and hour designated above, offered said lot or square of ground for sale, according to law; the property not bringing two-thirds of its appraised value was not sold; announced the fact, and stated that the said square 57 would be re-advertised for sale, and would be sold at the same place and hour on 17th April, 1852, for whatever it would bring, on a credit of 12 months, with interest at 7 per cent. per annum from day of sale, the purchaser furnishing good and sufficient security with special mortgage on the property. And on said 17th day of April, 1852, at the hour of 12 o'clock m., and at the place above designated, having first complied with all the formalities required by law, offered said square or lot of ground for sale, when W. B. Chrisp, as agent and for account of the Bank of Tennessee, being the last and highest bidder, became the purchaser thereof for the price and sum of twenty-five hundred dollars. The Bank of Tennessee, by her agent aforesaid, being the purchaser and plaintiff in said suit, paid over to me the sum of one hundred and eighty-nine $\frac{0}{100}$ dollars, being the amount of costs, and retained the balance of said purchase money, say the sum of two thousand three hundred and ten $\frac{98}{100}$ dollars, $2,310 98, in part satisfaction of said writ of fieri facias.

On the 24th February, 1852, I seized the following described property as belonging to def't, Peter Conrey, jr., to wit: "Nineteen squares of ground, lying and being in the parish of Jefferson, designated by the Nos. 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 136, 137, 138, 139, 140, 141, 142, 143, 144, and letter A, upon the plan of a property lying in the rear of the suburbs, Bouligny, Delachaisse, Delassiz, &c., and owned by Peter Conrey, jr., W. A. Gasquet, Henry Parish, D. Parish & Victoire Currel, made or drawn by Benj. Buisson, dated 17th February, 1846, and deposited in the 4th district court of

N. Orleans, with the suit of Peter Conrey, jr., *vs.* C. Currel; advertised the said 19 squares of ground for sale in the French and English languages, in the New Orleans Bee and Louisiana State Republican, parish of Jefferson, for cash; sale to take place at the Court Exchange, a coffee-house, corner of Rosseau and Phillip streets, parish of Jefferson, on the 31st day of March, 1852, at 12 o'clock m., being full thirty days from the first advertisement to the day of sale. On said 31st day of March, 1852, at the hour and place designated, and after the appraisement of said property and otherwise complying with the law, offered said nineteen squares of ground for sale. The property not bring two-thirds of the appraised value thereof, was not sold. Gave notice of the same, and announced that the property would be re-advertised for sale, and would be sold on the 24th day of April, 1852, at the same place and hour, for whatever it would bring on 12 months' credit, the purchaser furnishing his bond, with good and sufficient security, bearing interest at 7 per cent. per annum, from day of sale, with special mortgage on the property. On said 24th April, 1852, at the place and at the hour designated, having complied with all the formalities required by law, said 19 squares of ground were adjudicated to W. B. Chrisp, as agent and for account of the Bank of Tennessee, he being the highest and last bidder, for the price and sum of nineteen hundred and fifty dollars, ($1,950 00.) The Bank of Tennessee, by her agent aforesaid, being the purchaser and plaintiffs in said suit, paid over to me the sum of one hundred and ninety $\frac{53}{100}$ dollars *dollars* ($190 $\frac{53}{100}$,) being the amount of costs, and retaining the balance of said purchase-money, say the sum of seventeen hundred and fifty-nine $\frac{47}{100}$ dollars, ($1,759 $\frac{47}{100}$,) in part satisfaction of this said writ of fieri facias. Total amount to be carried to the credit of fieri facias, four thousand and seventy $\frac{45}{100}$ dollars, ($4,070 45.) This writ returned into court, together with notices of seizure, appraisements, certificates of mortgage, &c.

May 1, 1852.

WM. S. SCOTT, *U. S. M.*
By CHAS. A. LABUZAN,
U. S. dep. marshal.

Endorsed: Returned and filed 24th May, 1853.
J. W. GURLEY, *Clerk.*
By W. CORNELIUS, *Dep. cl'k.*

Notice of seizure, filed with returned writ of fi. fa., 24th May, 1853.

UNITED STATES MARSHAL'S OFFICE,
New Orleans, February 12, 1852.

Fi. fa. in the U. S. circuit court, east. dist. Louisiana—No. 2046.

BANK OF TENNESSEE
vs.
PETER CONREY, JR.

To PETER CONREY, Jr., esq.:

SIR: Take notice that I have seized, and in three days from the ser-

vice hereof shall proceed to advertise and sell, according to law, the following described property, to wit: 1st. One square of ground, lying and being in the town of Rickerville, in the parish of Jefferson, and numbered 57, as per plan drawn by B. Buisson and W. Thornton Thompson, on the 23d day of March, 1839, and deposited at this time in the office of James Graham, N. P., New Orleans; said lot or square of ground having a front of 280 feet 1 inch and 6 lines on Nayades street, 287 feet on St. Denis street, 454 feet 4 inches and 4 lines on St. Joseph street, and 530 feet 3 inches and 4 lines on Octavia street. 2d. The undivided $\frac{5}{24}$ of a tract of land in the parish of Jefferson, containing about 180 acres, bounded in front by the faubourgs Bouligny, Levandais, Dellasize and Delachase; on the upper line by the lands of D. T. Walden, and on the other side by the faubourg Lafayette, and lands of Cecil and S. W. Oakey, being the same land which is designated by the name "L. Pierce," on the map of New Orleans, published in 1834 by F. Zimple, to pay and satisfy the writ issued in this case, say the sum of eleven thousand five hundred and fifty dollars, together with damages, interest and costs, unless the same is immediately paid.

Your ob't serv't,
W. S. SCOTT, *U. S. M.*
By CHAS. A. LABUZAN,
U. S. dep. marshal.

Endorsed: Served copy of the within notice of seizure on Peter Conrey, jr., esq., personally, on 13th Feb., 1852.
CHAS. A. LABUZAN, *Dep'y marshal.*

Notice of seizure of 19 *squares of ground.*

Filed with the returned writ of fieri facias—May 24th, 1853.

U. S. MARSHAL'S OFFICE,
New Orleans, February 24, 1852.

BANK OF TENNESSEE
vs.
PETER CONREY, Jr.
} Nos. 2046 and 2065.—Fi. fas.

In the U. S. circuit court, 5th circuit, eastern district of Louisiana.

To PETER CONREY, Jr., Esq.:

SIR: Take notice, that I have seized and in three days from the service hereof shall proceed to advertise and sell, according to law, the following described property, to wit: "Nineteen squares of ground lying and being in the parish of Jefferson designated by the numbers 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, and letter A, upon the plan of a property lying in the rear of the suburbs Bouligny, Delachaisse and Delassize, &c., and owned by Peter Conrey, junr., Wm. A. Gasquet, Henry Parish, D. Parish and Victoire Currel, made or drawn by Benjamin Buisson,

dated 17th Feb., 1846, and deposited in the 4th district court of New Orleans, with the suit of Peter Conrey, jr., et als. *vs.* C. Currel," to pay and satisfy the above writs issued in said cases, say the sum of fourteen thousand five hundred and fifty dollars, together with interest and costs of suit—unless the same is immediately paid.

Your ob't servant,
WM. S. SCOTT, *U. S. M.*
By CHAS. A. LABUZAN,
U. S. deputy marshal.

Endorsed as follows:
"Notice of seizure of 19 squares of ground, parish of Jefferson." And on the same day, 24th February, 1852, served copy of the within seizure on Peter Conrey, jr., personally, in New Orleans.

CHAS. A. LABUZAN,
Deputy marshal.

Notice to appoint appraisers.

Filed with returned writ of fi. fa., 24th May, 1853.

BANK OF TENNESSEE
vs.
PETER CONREY, Jr.
} Nos. 2046 and 2065.

U. S. circuit court, 5th circuit, eastern district of Louisiana.

To PETER CONREY, Jr., esq., and WM. B. CHRISP, esq., agent of Bank of Tennessee:

SIR: You will please appoint an appraiser to estimate the cash value of the property seized in the above suits, who will attend at my office, 2d municipality hall, on Wednesday the 24th day of March, 1852, at 10 o'clock, a. m. (See advertisements annexed.)

Your ob't servant,
WM. S. SCOTT, *U. S. M.*
By CHAS. A. LABUZAN,
U. S. deputy marshal.

U. S. Marshal's Office, New Orleans, March 18, 1852.

Advertisements annexed to the above notice.

United States marshal's sale.

BANK OF TENNESSEE
vs.
PETER CONREY, Jr.
} No. 2046.

In the U. S. circuit court, 5th circuit, eastern district of Louisiana.

By virtue of a writ of fieri facias to me directed in the above entitled suit, I have seized and will sell to the highest bidder at the Court Ex-

change, a coffee-house, corner of Rousseau and Philip streets, in the city of Lafayette, parish of Jefferson, on Saturday the 27th day of March, 1852, at the hour of 12 o'clock, m., all the right, title and interest of Peter Conrey, jr., in and to the following described property, to wit:

1. One square of ground lying and being in the town of Rickerville, in the parish of Jefferson, and numbered fifty-seven, (57) as per plan drawn by B. Buisson and W. Thornton Thompson, on the 23d day of March, 1839, and deposited at this time in the office of James Graham, notary public, New Orleans. Said lot or square of ground having a front of 280 feet 1 inch and 6 lines on Nayades street; 287 feet on St. Denis street; 454 feet 4 inches and 4 lines on St. Joseph street, and 530 feet 3 inches and 4 lines on Octavia street.

2. The undivided $\frac{5}{24}$ of a tract of land in the parish of Jefferson, containing about 180 acres, bounded in front by Faubourgs Bouligny, Levaudais, Delassize and Delachaisse; on the upper line by the lands of D. T. Walden; on the other side by the Faubourg Lafayette and lands of Cecil and of S. W. Oakey, being the same land which is designated by the name "L. Pierce" on the map of the city of New Orleans, published in 1834 by F. Zimple.

Terms of sale: Cash on the spot.

U. S. Marshal's office, eastern district of Louisiana, New Orleans, February 19th, 1852.

WM. S. SCOTT,
U. S. marshal, eastern district of Louisiana.

United States marshal's sale.

BANK OF TENNESSEE
vs.
PETER CONREY, Jr.
} Nos. 2046 and 2065.

In U. S. circuit court, fifth circuit, eastern district of Louisiana.

By virtue of two writs of fieri facias to me directed in the above entitled suits, I have seized and will sell to the highest bidder at the Court Exchange, a coffee-house, corner of Rousseau and Philip streets, in the city of Lafayette, parish of Jefferson, on Wednesday the 31st day of March, 1852, at the hour of 12 o'clock, m., all the right, title and interest of the defendant, Peter Conrey, jr., in and to the following described property, to wit:

Nineteen squares of ground, lying and being in the parish of Jefferson, designated by the Nos. 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142, 143, 144, and letter A, upon the plan of a property lying in the rear of the suburbs Bouligny, De la chaisse, Delassize, etc., and owned by Peter Conrey, junr., William A. Gasquet, Henry Parish, D. Parish and Victoire Currel, made or drawn by Benj. Buisson, dated 17th February, 1846, and deposited in

the fourth district court of New Orleans, with the suit of Peter Conrey, jr., et als. *vs.* C. Currel.

Terms of sale: Cash on the spot.

WM. S. SCOTT,
United States Marshal, eastern district of Louisiana.

U. S. Marshal's Office, New Orleans, February 24th, 1852.

Endorsed as follows:

Notice to appoint appraisers for 24 March, 1852, at 10 o'clock, a. m.

On the 18th March, 1852, served copy of within notice to appoint appraisers on Peter Conrey, junr., personally, in New Orleans, and on Wm. B. Chrisp, ag't of Bank of Tennessee, personally, in N. Orleans, on 18th March, 1852.

JULIEN BOUNY,
Deputy U. S. marshal.

Appraisement.

Filed with returned writ of fi. fa., May 24th, 1853.

NEW ORLEANS, *March* 24, 1852.

W. S. SCOTT, esq., *U. S. Marshal*:

Dr. Sir: I have appointed J. L. Carman to act as appraiser for the property seized in the suit of the Bank of Tennessee vs. Peter Conrey, jr.

W. B. CHRISP,
Agent Br. Bank, Tennessee, Trenton.

U. S. CIRCUIT COURT,
Fifth circuit and eastern district of Louisiana.

BANK OF TENNESSEE
vs.
PETER CONREY, Jun'r. } No. 2046 & 2065.

We, the undersigned, appointed appraisers, as follows: James L. Carman on the part of plaintiffs, (appointed by W. B. Chrisp, agent of plaintiff,) and Joseph A. Beard, on the part of defendant, (appointed by the United States marshal, the defendant having failed to appoint although duly notified,) do solemnly swear that we will truly, faithfully and impartially make a just and true cash appraisement of the following described property, seized as the property of the defendant, Peter Conrey, jr., in the above entitled suits, so help us God!

1. One square of ground, lying and being in the town of Rickerville, in the parish of Jefferson, and numbered 57, as per plan drawn by B. Buisson and W. Thornton Thompson, on the 23d day of March, 1859, and deposited at this time in the office of James Graham, N. P.; said lot or square of ground having a front of 280 feet one inch and six lines on Nayades street; 287 feet on St. Denis street; 454 feet 4 inches and 4 lines on St. Joseph street; and 530 feet 3 inches and 4 lines on Octavia street.

2, Nineteen squares of ground, lying and being in the parish of Jefferson, designated by the Nos. 128 to 144, inclusive, and the letter A, upon the plan of a property lying in the rear of the suburb Bouligny, Delachaise, Delassize, &c., &c., and owned by Peter Conrey, jun'r, William A. Gasquet, Henry Parish, D. Parish, and Victoire Currel, made or drawn by Benj'n Buisson, dated 17th Feb'y, 1846, and deposited in 4th district court of N. Orleans, with the suit of Peter Conrey, jr., et als. vs. C. Currel; being the same land which is designated by the name of "L. Pierce" on the map of the city of N. Orleans, published in 1834 by F. Zimple.

J. A. BEARD,
J. L. CARMAN.

Sworn to and subscribed before me, this 24th March, 1852.

J. L. WINTER,
2d Justice of the Peace.

We, the undersigned, J. L. Carman, on the part of plaintiffs, and Joseph A. Beard on the part of defendant, appraisers, appointed as aforesaid, having first been duly sworn, do appraise the square No. 57 at six thousand dollars.

The squares Nos. 128 to 144, inclusive, and the square designated as letter A, at in all nineteen squares, being the $\frac{5}{14}$ of 180 acres, parish of Jefferson, and designated on the map drawn by F. Zimpel, "L. Pierce," dated 1834, for the sum of two thousand dollars.

J. L. CARMAN,
J. A. BEARD.

Certificate from conveyance office.

Filed with marshal's return, 24th May, 1853.

STATE OF LOUISIANA, *parish of Jefferson.*

I, the undersigned recorder in and for the parish of Jefferson aforesaid, duly commissioned and sworn, do hereby certify, that from the records in my office it does not appear that Peter Conrey, jr., has alienated the following described property, to wit:

First. One square of ground, lying and being in the town of Rickerville, in the parish of Jefferson, and numbered fifty-seven, (57,) as per plan drawn by B. Buisson and W. T. Thompson, on the 23d March, 1839, and deposited in the office of James Graham, notary, in New Orleans; said square of ground having a front of 280 feet 1 inch and 6 lines on Nayades street; 287 on St. Denis street; 454 feet 4 inches and 4 lines on St. Joseph street; and 530 feet 3 inches and 4 lines on Octavia street.

Second. The undivided $\frac{5}{14}$ of a tract of land in the parish of Jefferson, containing about 180 acres, bounded in front by the faubourgs Bouligny, Levaudais, Delassize, and Delachaise; on the upper line by the lands of D. T. Walden; on the other side by the faubourg Lafay-

ette and lands of Cecil and S. W. Oakey, being the same land which is designated by the name of L. Pierce on the map of the city of New Orleans, published in 1834 by F. Zimpel.

In faith whereof I grant these presents under my signature and seal of office, at the parish of Jefferson, this 27th day of March, [SEAL.] 1852.

JOHN R. BORGSTEDE, *Recorder.*

Certificate from recorder of mortgages.

Filed with returned writ of fi. fa., 24th May, 1853.

MORTGAGE OFFICE.

The undersigned, recorder of mortgages for the parish of Jefferson, State of Louisiana, certifies, that in the records in his office there are no other mortgages standing in the name of Peter Conrey, jr., on the following described property, to wit:

1. Nineteen squares of ground, lying and being in the parish of Jefferson, designated by the numbers 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142, 143, 144, and letter A, upon the plan of a property lying in the rear of suburbs Bouligny, Delachaise, Delassize, etc., and owned by Peter Conrey, jr., Wm. A. Gasquet, Henry Parish, D. Parish, and Victoire Currel, made or drawn by B. Buisson, dated 17th February, 1846, and deposited in the 4th district court of New Orleans, with the suit of P. Conrey & als. vs. C. Currel.

2. One square of ground, lying and being in the town of Rickerville, in the parish of Jefferson, and numbered 57, as per plan drawn by B. Buisson and W. T. Thompson, on the 23d March, 1839, and deposited at this time in the office of James Graham, notary; said lot or square having a front of 280 feet 1 inch and 6 lines on Nayades street; 287 feet on St. Denis street; 454 feet 4 inches and 4 lines on St. Joseph street; and 530 feet 3 inches and 4 lines on Octavia street.

3. The undivided $\frac{5}{24}$ of a tract of land in the parish of Jefferson, containing about 180 acres, bounded in front by the faubourg Bouligny, Levaudais, Delassize, and Delachaise; on the upper line by the lands of D. T. Walden; on the other side by the faubourg Lafayette and lands of Cecil and S. W. Oakey, being the same land which is designated by the name of L. Pierce on the map of the city of New Orleans, published in 1834 by F. Zimple.

Then the following:

1. The one which, by an act of the 17th May, 1848, before L. Herman, notary public, he granted in favor of Samuel Wright Oakey, in five undivided twenty-fourth parts of a tract of land, thirdly above described, to secure the payment of the sum of eighteen hundred dollars, amount of a promissory note dated 17th May, 1848, and payable six months after date. (Recorded May 24th, 1848, B. 13, p. 163.)

2d. The one which, by an act of the 5th December, 1849, before H. B. Cenas, notary, he granted in favor of John M. Backhis, vendor,

to secure the payment of two promissory notes, for eight hundred and thirty-three 33⅓-100 dollars, each dated the 1st December, 1849, and payable in one and two years after date, with interest from date, at 6 p. c.; from maturity till paid, at 8 p. c. per annum. (Recorded December 21, 1849, B. 14, p. 399.) This mortgage bears on property which might be a portion of the property firstly above described.

3d. The one which, by an act of the 25th July, 1851, before T. Guyol, notary, he granted of square 57 secondly above described, and other property, to secure the payment of two promissory notes, each for six thousand dollars, drawn to the order and endorsed by himself, dated July 25th, 1851, and payable one year after date, with interest after maturity, at 8 per cent. per annum. (Recorded July 26, 1851, B. 15, p. 754.)

4th. The one general resulting from a judgment rendered on the 7th November, 1851, in the fifth district court of New Orleans, in favor of the Bank of Tennessee against said Conrey, jr., for nine thousand six hundred and sixty-two $\frac{1}{100}$ dollars, with interest at 5 per cent. from the 16th July, 1851, on $1,204 75; from the 17th July, 1851, on $2,198 92; from the 19th July, 1851, on $5,198 60; from the 23d July, 1851, on $445 65; from 24th July, 1851, on $624 25, and costs of suit. (Recorded November 13, 1851, B. J 3, p. 115.)

5th. The one general resulting from a judgment rendered on the 7th November, 1851, in the same court, in favor of the same Bank of Tennessee against said Peter Conrey, jr., for four thousand two hundred dollars, with interest thereon, at 5 per cent. per annum, from the 10th September, 1851. (Recorded 13th November, 1851, B. J 3, p. 115.)

6th. The one general resulting from a judgment rendered on the 7th November, 1851, in the same court, in favor of the same Bank of Tennessee against said Peter Conrey, jr., for thirty-eight thousand nine hundred and thirty-eight dollars, with interest at the rate of 5 per cent. per annum, from the 18th July, 1851, on $5,250; from 21st July, 1851, on $5,250; from the 2d August, 1851, on $6,300; from the 5th August, 1851, on $7,438; from the 11th August, 1851, on $4,200; from the 2d August, 1851, on $5,250; and from 26th August, 1851, on $5,250; and costs of suit. (Recorded November 13, 1851, B. J 3, p. 118.)

7th. The one general resulting from a judgment rendered 16th December, 1851, in the United States circuit court, fifth circuit, and eastern district of Louisiana, in favor of Benjamin A. Shepherd against said Conrey, jr., for two thousand dollars, with interest thereon at the rate of 5 per cent. per annum, from the 5th September, 1851, till paid, three dollars costs of protest and costs of suit. (Recorded December 22, 1851.)

Parish of Jefferson, March 24th, 1852.

J. B. GERVAIS ARNOULT.

The undersigned, recorder of mortgages in and for the parish of Jef-

ferson, certifies, that the mortgage thirdly above described has this day been annulled from the records of this office.

Parish of Jefferson, April 17th, 1852.

J. B. GERVAIS ARNOULT.

The undersigned, recorder of mortgages in and for the of Jefferson, certifies, that the mortgage firstly above described has this day been duly cancelled from the records of this office.

Parish of Jefferson, April the twenty-fourth, 1852.

[SEAL.] J. B. GERVAIS ARNOULT.

Sale of square of ground, No. 57, by United States marshal to Bank of Tennessee.

UNITED STATES OF AMERICA,
Eastern district of Louisiana.

Whereas, I, William Sayers Scott, marshal of the United States, for the district of Louisiana, by virtue of a writ of fieri facias to me directed by the honorable the circuit court of the United States, for the district of Louisiana, in the suit of Bank of Tennessee vs. Peter Conrey, jr., No. 2046, on the docket of said court, after having fulfilled and complied with all the previous legal requisites, did seize all the right, title, and interest of the defendant, Peter Conrey, jr., in and to the following described property, to wit:

"One square of ground, lying and being in the town of Rickerville, in the parish of Jefferson, and numbered fifty-seven, (57,) as per plan drawn by B. Buisson and W. Thornton Thompson, on the 23d day of March, 1839, and deposited at this time in the office of James Graham, N. P., New Orleans; said lot or square of ground having a front of 280 feet one inch and six lines on Nayades street, two hundred and eighty-seven feet on St. Denis street, four hundred and fifty-four feet four inches and four lines on St. Joseph street, and five hundred and thirty feet three inches and four lines on Octavia street; and after having given due and legal notice to the said defendant, Peter Conrey, jr., of the said seizure in the manner pointed out by law, I advertised the said property for sale, after the expiration of the legal delay from the time of giving said notice, to wit, on the *the* twenty-first day of February, 1852, by advertisements composed in the French and English languages, announcing the sale of said property to take place at the Court Exchange, a coffee-house, corner of Rousseau and Phillip streets, in the city of Lafayette, parish of Jefferson, on the 27th day of March, 1852. Said advertisements were published in the New Orleans Bee, a newspaper published in the city of New Orleans, and the Louisiana State Republican, a newspaper published in Lafayette, parish of Jefferson, from the 21st day of February, 1852, to the day of sale, being full thirty days from the date of the first publication made. And having further complied with and performed all the additional previous legal requisites, and after the said property having been duly appraised, did

expose the same at public sale according to law, at the Court Exchange, a coffee-house, corner of Rousseau and Philip streets, in the city of Lafayette, parish of Jefferson, on the twenty-seventh day of March, 1852, at the hour of twelve o'clock, m., after having read in an audible voice the certificate of the recorder of mortgages for the parish of Jefferson, bearing date seventeenth day of April, 1852, from which it appears that there exists no other mortgages than the following, to wit:

The one general resulting from a judgment rendered on the seventh November, 1851, in the fifth district court of New Orleans, in favor of the Bank of Tennessee, against said Conrey, jr., nine thousand six hundred and sixty-two $\frac{15}{100}$ dollars, with interest at 5 per cent. from the 16th July, 1851, on $1,204 75; from the 17th July, 1851, on $2,198 92; from the 19th July, 1851, on $5,198 60; from the 23d July, 1851, on $445 65; from 24th July, 1851, on $624 25; and costs of suit. (Recorded November 13th, 1851, B. J 3, p. 115.)

The one general resulting from a judgment rendered on the seventh November, 1851, in the same court, in favor of the same Bank of Tennessee, against said Peter Conrey, jr., for four thousand two hundred dollars, with interest thereon at 5 per cent. per annum, from the 10th September, 1851. (Recorded 13th November, 1851, B. J 3, p. 115.)

The one general resulting from a judgment rendered on the seventh November, 1851, in the same court, in favor of the same Bank of Tennessee, against said Peter Conrey, jr., for thirty-eight thousand nine hundred and thirty-eight dollars, with interest at the rate of 5 per cent. per annum, from the 18th July, 1851, on $5,250 00; from the 21st July, 1851, on $5,250 00; from 2d of August, 1851, on $6,300 00; from 3d August, 1851, on $7,438 00; from 11th August, 1851, on $4,200 00; from 2d August, 1851, on $5,250 00; and from 26th August, 1851, on $5,250 00, and costs of suit. (Recorded November 13th, 1851, B. J 3, p. 118.)

The one general resulting from a judgment rendered 16th December, 1851, in the United States circuit court, fifth circuit, and eastern district of Louisiana, in favor of Benjamin A. Shepherd, against said Conrey, jr., for two thousand dollars, with interest thereon at the rate of 5 per cent. per annum, from the 5th September, 1851, till paid, three dollars costs of protest and costs of suit. (Recorded December 22, 1851.)

"A copy of said certificate of mortgages is filed in this suit, to which reference can be made."

And after duly crying said property there was no sale, for the want of a bid to the amount of two-thirds of the appraised value of said property. And on the said 27th day of March, 1852, I announced that the sale was adjourned over until the 17th of April, 1852, at the hour of twelve o'clock, meridian, and would be sold for whatever it would bring, on a credit of twelve months, the purchaser being required to furnish good and sufficient security and special mortgage on the property sold, bond to bear interest at the rate of seven per cent. per annum from the day of sale until final payment. Publications having

been made, and the law in all respects having been complied with, full fifteen days having elapsed from the date of the first publication made to the day of sale, to wit, the 31st day of March to the 17th day of April, 1852, and on the said 17th day of April, 1852, at the hour of 12 o'clock, m., at the Court Exchange, a coffee-house, corner of Rousseau and Philip streets, in the city of Lafayette, parish of Jefferson; and after reading in an audible voice the advertisement of sale and certificate of mortgage, and duly crying the same, when William B. Chrisp, as agent of the Bank of Tennessee, being the highest and last bidder for the price and sum of two thousand five hundred dollars, ($2,500 00,) the said before described property was adjudicated to the said William B. Chrisp, as agent and for account of the Bank of Tennessee, which sum I hereby acknowledge to have received in the following manner, to wit:

The Bank of Tennessee, by her agent aforesaid, became the purchaser thereof at 12 months' credit, and the said bank being the plaintiff in said suit, paid over to me the sum of one hundred and eighty-nine $\frac{02}{100}$ dollars, being the amount of costs, and retained the balance of said purchase money, say the sum of two thousand three hundred and ten $\frac{98}{100}$ dollars, in part satisfaction of said writ of fieri facias.

Now, therefore, know all men by these presents, that I, the said marshal, in consideration of the premises and by virtue of the laws in such case made and provided, do sell and transfer to the said Bank of Tennessee all the right, title and interest which the said Peter Conrey, jr., had in or to the said before described property, to have and to hold the same to the said Bank of Tennessee or their assigns forever.

In witness whereof, I have hereunto signed my name in the district eastern of Louisiana, this the 19th day of April, in the year one thousand eight hundred and fifty-two, and the 76th year of the independence of the United States.

WM. S. SCOTT,
U. S. Marshal, eastern district of La.
By CHAS. A. LABUZAN,
U. S. Deputy marshal, eastern district of La.

Signed in the presence of—
J. HERNANDEZ,
N. W. BUTLER.

Recorded B. 16, p. 366, parish of Jefferson, the 24th May, 1852.
Registered in conveyance book C, folio 431 and 432, parish of Jefferson, La., May 24th, 1852.

H. RARESHIDE, *Deputy register.*

CLERK'S OFFICE, CIRCUIT COURT OF THE UNITED STATES,
Fifth circuit and eastern district of Louisiana.

Recorded the foregoing in the record book for sales, bonds, &c., this 3d day of June, A. D. 1852, p. 285 and 286.

Attest: J. W. GURLEY, *Clerk,*
By W. CORNELIUS, *Deputy clerk.*

Opinion of Hon. J. A. Campbell.

Filed 20th June, 1853.

L. B. Horne
vs.
Bank of Tennessee.

The proceedings in this suit have resulted in a petitory action in favor of the plaintiff against the Bank of Tennessee, for a square of land situate in the town of Rickerville.

The title of both parties is deduced from Peter Conrey, jr., an insolvent debtor, who filed on the 7th November, 1851, a petition in the second district court of New Orleans, declaring his inability to meet his engagements, and praying that a cession of his property might be accepted by the court for the benefit of his creditors, and that in the mean time all proceedings against him should be stayed. To this petition a schedule was annexed, in which it is but fair to assume, that the property now in dispute was designed to be included, but it is so misdescribed as not to be identified as a portion of his estate. The district court, on the day of the presentment of the petition, accepted the cession and convoked by its order a meeting of the creditors of the insolvent, the 13th December following. A meeting was held, a syndic appointed, and a report of the proceedings made to the court.

On the 8th March following, the court authorized a sale of the property by the syndic; at that sale the plaintiff became the purchaser in May, 1852. Before the petition of Conrey was filed, (October, 1851,) the defendant had commenced a suit against Conrey in the circuit court of the U. S., for the eastern district of Louisiana; judgment was rendered in this suit against Conrey in December after the petition for the benefit of the insolvent laws and the order of the court thereon, and the appointment of the syndic by the creditors.

In February the execution of the bank was levied, and in April the property was sold by the marshal to the bank; the bank immediately entered upon the possession of the tenants of Conrey, who attorned to it as the lawful owner.

The first inquiry that presents itself is, what was the effect of the acceptance by the court of the cessio bonorum of the debtor, the appointment of the syndic by the creditors, and his recognition by the court? To what extent and for what purpose did the cession vest the property in the syndic or the creditors?

The supreme court of Louisiana (4 Annual Rep., 490) says, "by the effect of the cession, its acceptance by the court and the creditors at their meeting, and the recognition and entering into office of the syndic, all the property and rights of property of the insolvent became vested in his creditors, represented by the syndic as their trustee." Under our legislation and the reported decisions of the supreme court, this proposition cannot be considered as admitting of a doubt. See the acts of 1817 and 1826, and the cases of West *vs.* Creditors, 8 Rob., 128; 9 Rob., 223.

In the same opinion the court says: "It has been repeatedly decided that all the rights of property of an insolvent vest in his syndic, whether they be stated in the schedule or not."

The consequence, therefore, of the action in the 2d district upon the cession of the debtor was to divest his right of property in his estate, and consequently to defeat the execution of the judgment upon that property. It was supposed in the argument that some injustice has been inflicted upon the defendant in this suit by the legislation of Louisiana, which this court is bound to redress. The legislation of Louisiana proceeds upon a well known principle that equality among the creditors is equity, and provides the means to effect that object. The defendant was placed on the schedule as a creditor, and is entitled to his distributive share. This was done before any seizure of the property under the judgment rendered in favor of the bank.

The complaint of the bank therefore is, that being less vigilant in securing a preference than the creditors at large in securing equality, this court should notwithstanding confer a priority upon it.

This court has no power to interfere with such dispositions of the property of a debtor made under the State laws; the act of Congress of 1st July, 1840, places the judgment and decrees of the courts of the U. S. upon the same footing as the judgments and decrees of the courts of the State in which they are rendered, as to the extent and duration of their liens. It is very clear that judgments and executions in favor of a creditor of Conrey in the State courts would not be operative to dispose of this property. For the same reasons the same property is protected from the judgments and executions of the United States courts.

The Supreme Court of the United States in the case of Williams, adm'r, vs. Benedict and others, 8 Howard, S. C. R., 107, have settled principles which seem to be decisive of this case.

That was a case of an administrator, against whom a judgment had been rendered in the district court of the U. S. in Mississippi, resisting the levy of an execution upon the assets in his hands, in consequence of a decree of insolvency in the probate court, after the judgment, and the necessity he was placed thereby under the laws of Mississippi to make an equal distribution of the assets in such a case. The case is stronger in its facts than this, because in this case the district court had accepted the cession and approved the proceedings of the creditors before the seizure of the property.

The Supreme Court refer to the laws and decisions of the supreme court of Mississippi to ascertain that an equality of distribution of the assets of an insolvent estate was the settled policy of that State, "and that if the fund from which each of the creditors has an equal right to claim satisfaction is insufficient to pay all equity, requires that one should not be permitted, by a mere race of diligence, to seize satisfaction of his whole debt at the expense of another. Hence a declaration of insolvency must relate back to the death, in order that this equitable principle may have its effect." The court proceeded to declare, "that as the judgment obtained by the plaintiff below did not entitle them to a

prior lien or a right of satisfaction, in preference to the other creditors of the insolvent estate, they have no right to take in execution the property of the deceased, which the probate court has ordered to be sold for the purpose of an equal distribution among all the creditors. The jurisdiction of the court has attached to the assets; they are in gremeo legis. This is the condition of the estate of the insolvent in the case before me. He had surrendered it for distribution before the judgment in favor of the defendant. No lien could attach in favor of any creditor to the exclusion of the others after that event. In this case the defendant was behind in the race of diligence. I may use the language of the Supreme Court, and say, "that if the marshal was permitted to seize this property under an execution, it would not only cause manifest injustice to be done to the rights of others, but be the occasion of an unpleasant conflict between courts of separate and independent jurisdiction."

I find in the 2d Louisiana Reports, 354, (Schroedor's syndics vs. Nicholson,) an opinion of the supreme court of that State, upon a question analogous to this. I very highly approve the argument of the court in that opinion, and am satisfied to apply it to the decision of this cause.

My conclusion is, that the right to the property described in the petition is in the plaintiff, and judgment will be entered accordingly.

J. A. CAMPBELL,
Presiding judge.

Bill of exceptions.—Filed 11th October, 1853.

LEWIS B. HORNE
vs.
BERNARD and HARE, and Bank of Tennessee substituted defendant.

Be it remembered, that on the trial of this cause, the defendant, the Bank of Tennessee, preferred to the court the following propositions of law arising on the agreed statement of facts, on which it was insisted that this case should be decided in favor of said bank, and against the plaintiff, Lewis B. Horne, to wit:

1st. The surrender of property by Peter Conrey, in the State court of Louisiana, did not transfer to his creditors the ownership of any part or portion thereof, whether it was described or referred to in the schedule or not, but the same remained the property of Conrey notwithstanding the surrender.

2d. The words "all the property of such insolvent debtor mentioned in said schedule shall be fully vested in his creditors," used by the legislature of Louisiana in the act of 1826, in regard to insolvent debtors, cannot and ought not to be construed to have reference to any property which is not mentioned in the schedule; but property not named in the schedule remains in the situation provided for by the laws of Louisiana

in force prior to the passage of the act of 1826, and the rights of parties thereto were not altered by the passage of said act.

3d. The only right which the creditors of Conrey had in the property which was surrendered, was one analogous to that of pledge, that is, a right to take possession of and sell the property according to the forms of law, and apply the proceeds to the payment of their debts, and was not a right of ownership.

4th. That the surrender of Conrey did not trans to the creditors possession of any property whatever, whether mentioned in the schedule or not; but only conferred on them the right to take possession thereof, and to sell it in due course of law to pay the debts due to them.

5th. The right of the State court to cause to be sold such property as they had reduced into possession, did not oust the jurisdiction of the United States circuit court in the case of the Bank of Tennessee vs. P. Conrey, but that court rightfully proceeded to render judgment against said Conrey, and to execute the same by seizing and selling the land in controversy.

6th. Whatever may be the law in regard to the property described in the schedule and reduced into the possession of the creditors or syndic, the circuit court had an undoubted right to execute its judgment by causing the seizure and sale of property not reduced into the possession of the syndic and not described on the schedule.

7th. The act of the Louisiana legislature of 1826, in regard to insolvent debtors, was not intended to change the law in regard to the rights of any persons named therein to the property of the insolvent, or to change in any manner the mode of proceeding in the State court to enforce those rights; the legislature having been extremely careful by provisoes to retain exactly the old law in regard to the rights of property; but the said act was intended only to effect a change in the remedies or final process used in this court, by changing the names of rights, and therefore the court was bound altogether to disregard the said act of the Louisiana legislature so far as that act affects the process of this court.

8th. The syndic and auctioneer and Horne, as vendor and vendee, had no right to treat the marshal's sale as a nullity, or in any way to complain of it, after the sale by the marshal to the Bank of Tennessee had regularly been made without any legal opposition on their part.

9th. The acceptance of the surrender by the second district court of New Orleans, and all orders made and all proceedings had in that court, have reference only to the property named in the inventory, unless some other property is expressly named in the proceeding itself; and therefore, that they could have no effect whatever on the right of the marshal to execute process by a seizure of property not named in the inventory and not expressly referred to.

And prayed that the said propositions should be sustained and the cause finally decided in favor of the bank; but the court ruled all these propositions against the Bank of Tennessee, and held the following positions to be law applicable to the case:

1st. That the surrender in the second district court of Orleans divested Conrey of all his rights of property, and vested those rights in the creditors.

2d. That because we had no lien and no right of payment in preference to others, therefore we had no right to execute our judgment in the circuit court by a sale of Conrey's property, although the fact of Conrey's insolvency was not made known to the court and no objection was made to our proceeding.

3rd. That the property was in gremio legis by virtue of the constructive possession arising from the surrender in the second district court of New Orleans.

4th. That it is but fair to assume that the property now in dispute was designed to be included by Conrey in his schedule.

To all of which propositions as well as to the whole opinion of the court, which was reduced to writing, and a copy of which is annexed to the bill of exceptions, the counsel of the Bank of Tennessee objected, on the ground that the said propositions made by the court and its opinion were contrary to law and justice, and tendered this, his bill of exceptions, to be signed by the court, which is accordingly done.

This bill is allowed so as to have the same construction as if the case had been submitted to a jury, and these exceptions had been taken on the trial.

J. A. CAMPBELL,
Judge presiding.

Note.—The opinion referred to as being annexed to the foregoing bill of exceptions may be found on pages 48 to 51 of this transcript.

And afterwards, to wit, on the 12th day of August, A. D. 1853, the court rendered a final judgment in this case which was duly entered of record in the minutes of that date, and on the 19th day of August, A. D. 1853, the said final judgment was recorded in the judgment docket, and is in the words and figures following, to wit:

Circuit court of the United States, fifth circuit and eastern district of Louisiana; April term, A. D. 1853.—At Chambers, 12th August, 1853.

By J. A. CAMPBELL,
Presiding judge.

LEWIS B. HORNE
vs.
G. BERNARD and als. } 2241.

This cause came on to be heard at this term of the court and was argued by counsel; and the court having duly considered the same, and being of opinion that the title to the property in dispute is in the plaintiff, doth now order, adjudge, and decree that the said plaintiff, Lewis B. Horne, do have and recover judgment against the defendants, the President, Directors, and Company of the Bank of Tennessee, for all and singular that certain square of ground situated in the town of Rick-

erville, parish of Jefferson, Louisiana, and measuring two hundred and eighty feet one inch and six lines front on Nayades street, two hundred and seventy feet front on St. Denis street, four hundred and fifty-four feet four inches and two lines front on Joseph street, and five hundred and thirty feet three inches and four lines front on Octavia street; and subdivided into thirty-two lots, numbered from one to thirty-two inclusive, as per plan of C. A. Hedin, architect, dated 23d April, 1852, and deposited in the office of T. O. Stark, notary public in and for the city of New Orleans, as plan No. 113; said square being the same property which Peter Conrey, jr., acquired of the City Bank of New Orleans on or about the 27th day of June, 1849, as per act before Joseph R. Beard, then a notary public in said city, and is also designated on the original plan of the town of Rickerville, deposited in the office of said Beard as square No. 57. And it is further ordered that the said plaintiff recover of the said defendants rent on said property, at the rate of ten dollars per month from the 28th August, 1852, until delivery of possession thereof, and the costs of suit to be taxed.

Judgment rendered 12th August, 1853.

Judgment signed 19th August, 1853.

J. A. CAMPBELL,
Presiding judge.

Petition for writ of error.—Filed 22d September, 1853.

LEWIS B. HORNE
vs.
BERNARD & HARE, and the Bank of Tennessee substituted defendants.

To the honorable the judges of the circuit court of the United States, for the eastern district of Louisiana.

The petition of the President, Directors and Company of the Bank of Tennessee, who were by an order of the court substituted as defendants in the suit above styled, in place and stead of their tenants Bernard and Hare, who were discharged, respectfully shows: That on the day of 1853, a certain final judgment was rendered against them in the said suit, by which the plaintiff, Lewis B. Horne, recovered from them the square No. 57, in the town of Rickerville, a property having a value greatly over the sum of two thousand dollars, exclusive of all costs.

That petitioners are informed and believe, that there is error in the said judgment to their prejudice.

The premises considered, your petitioners pray, that, upon their giving bond and security according to law, a writ of error be issued to the circuit court of the United States for the eastern district of Louisiana, to bring the said cause before the Supreme Court of the United States at its next term in December, 1853, then and there to be proceeded in according to law, and for general relief in the premises.

STOCKTON & STEELE,
Attorneys.

Order—endorsed on the above petition.

Let a writ of error be allowed as prayed for, on defendant's giving bond, conditioned according to law, in the penal sum of one thousand dollars, with good and solvent security.

J. A. CAMPBELL,
Associate justice Supreme Court U. S.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, John W. Gurley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing 56 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had in the case of Lewis B. Horne *vs.* G. Bernard et als., (the Bank of Tennessee substituted defendant,) No. 2241 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 15th day of October, A. D. 1853.

[SEAL.]

J. W. GURLEY, *Clerk.*

Writ of error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between Lewis B. Horne, plaintiff, and the President, Directors and Company of the Bank of Tennessee, defendants, a manifest error hath happened to the great damage of the said President, Directors and Company of the Bank of Tennessee, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.